



14 AUG 2006

WENDEROTH LIND AND PONACK  
2033 K ST NW STE 800  
WASHINGTON, DC 20006-1021

In re Application of :  
Hagiwara et al. :  
Application No. 10/535,276 :  
PCT No.: PCT/JP03/14697 :  
Int. Filing Date: 19 November 2003 : COMMUNICATION  
Priority Date: 19 November 2002 :  
Atty. Docket No.: 2005\_0821A :  
For: Method Of Obtaining Human Mono- :  
clonal Antibodies Having Cancer Cell :  
Proliferation-Inhibiting Activity :

This is in response to the declaration of the inventors filed on 15 November 2005, which is being treated under 37 CFR 1.42.

### **BACKGROUND**

This international application was filed on 19 November 2003, claimed an earliest priority date of 19 November 2002, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 03 March 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 19 May 2005. Applicants filed, *inter alia*, the basic national fee on 18 May 2005.

### **DISCUSSION**

Review of the declaration of the inventors filed on 15 November 2005 reveals that joint inventor Yoshihide Hagiwara is indicated to be "deceased" and that joint inventor Hideake Hagiwara has signed on behalf of Yoshihide Hagiwara. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Further examination of the declaration filed on 15 November 2005 reveals that it does not provide "the facts which the inventor would have been required to state" in that Yoshihide Hagiwara's citizenship, residence and mailing address information is not listed. Moreover, the declaration states that Hideaki Hagiwara is signing "as heir of Yoshihide Hagiwara, deceased," but there is no indication whether she is his sole heir, or whether a legal representative has been appointed or is required to be appointed under the applicable law. For these reasons, it would not be appropriate to accept the declaration of the inventors under 37 CFR 1.42 at this time.

**CONCLUSION**

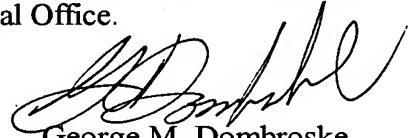
The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



Leonard Smith  
PCT Legal Examiner  
PCT Legal Office



George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (571) 272-3283  
Fax: (571) 273-0459